

In the Matter of Computer Service Technician (C0562M), Middlesex County
CSC Docket No. 2013-2299
(Civil Service Commission, decided August 15, 2013)

Middlesex County requests that the October 2, 2012 certification for Computer Service Technician (C0562M) be cancelled.

By way of background, the examination announcement for Computer Service Technician (C0562M) was announced open to Middlesex County residents with a closing date of October 12, 2010, in response to the Middlesex County Board of Social Services' provisional appointment of Andrew Kelly to the subject title effective July 26, 2010. The resultant eligible list promulgated with 11 names on March 17, 2011, and expires on March 16, 2014.¹ On March 22, 2011, a certification of the eligible list was issued to the Middlesex County Board of Social Services and Kelly was appointed effective April 25, 2011. Seven names remain active on the eligible list. On October 2, 2012, a second certification of the subject eligible list was issued to Middlesex County listing the remaining seven eligibles. This was the result of the provisional appointment of Robert Hoffman, who had been assigned to the Department of Information Technology. Hoffman does not appear on the certification or the eligible list (C0562M). However, a second examination for the subject title (C1073P) was announced open to Middlesex County residents with a closing date of December 27, 2012, which appears to have been issued in response to Hoffman's provisional appointment.² The resultant eligible list (C1073P) promulgated with 14 names on April 18, 2013, and expires on April 17, 2016. Hoffman is tied with three other eligibles at the seventh rank on this eligible list.³ A certification has not yet been issued.

In its request, the Middlesex County appointing authority explains that, in September 2012, it contacted this agency to inquire as to whether there was an eligible list for Computer Service Technician since it wished to hire an employee for a position. It asserts that it was told that "there was no certification list for our jurisdiction (T12000000)." Thus, based on this information, the appointing authority appointed Hoffman provisionally pending open competitive examination procedures effective September 24, 2012. Additionally, the appointing authority indicates that on October 9, 2012, it received the October 2, 2012 certification of the (C0562M) eligible list. Upon review, it discovered that the certification contained

¹ The examination (C0562M) was administered as an unranked unassembled examination based on qualifying education and experience and resulted in all eligibles tied with the number one ranking.

² On October 12, 2012, the Middlesex County appointing authority wrote to the Division of Classification and Personnel Management regarding the matter and requested that Hoffman have an opportunity to apply for a test announced in its jurisdiction. It maintained that the Middlesex County Board of Social Services was a separate and autonomous agency.

³ The examination (C1073P) was administered as a ranked unassembled examination based on education and experience.

the names of the same eligibles whose names were certified to the Middlesex County Board of Social Services.⁴ Moreover, it notes that when this agency posted the examination announcement for Computer Service Technician (C1073P), Hoffman filed for the examination and paid the requisite \$25 fee.

Thereafter, the appointing authority states that it received a Disposition Deficiency Notice, dated January 17, 2013, regarding the October 2, 2012 certification. In that notice, the Division of Classification and Personnel Management advised that “[f]or purposes of [open competitive] examinations, an agency’s classification as an autonomous agency is not relevant. Parent and autonomous agencies utilize the same [open competitive] examination announcement and eligible list. Our records indicate a complete certification exists and a provisional remains in the title. Please update CAMPS record to show the provisional has been removed or this certification will be referred to [the Division of Appeals and Regulatory Affairs] for enforcement if no other eligibles are being appointed.”⁵

The appointing authority maintains that the Middlesex County Board of Social Services is “a separate and ‘*autonomous*’ local government entity within Middlesex County,” having its own appointing authority and independently disposing of its certifications without any consultation with Middlesex County. Thus, it requests that the October 2, 2012 certification for Computer Service Technician (C0562M) be cancelled and it be provided with a certification from the Computer Service Technician (C1073P) eligible list. It notes that Hoffman is a “competent young man with family obligations and both the employer, Middlesex County, and the provisional employee has complied with all Civil Service Guidelines.”

CONCLUSION

N.J.A.C. 4A:4-3.7(e) and *N.J.A.C.* 4A:8-2.1(c)1i define an autonomous agency as one which, by statute is a body corporate and has the power of an appointing authority. *N.J.A.C.* 4A:1-1.3 defines an appointing authority as a person or group of persons having the power of appointment or removal. Additionally, *N.J.A.C.* 4A:4-4.1(a) provide that when a vacancy is to be filled in the competitive division of the career service from an eligible list, the appointing authority shall request a certification of names for regular appointment. Such request shall be submitted in advance under procedures set by this agency to enable the agency to issue or

⁴ One eligible was added to the eligible list (C0562M) subsequent to the March 22, 2011 certification to the Middlesex County Board of Social Services. As indicated above, a total of seven eligibles remain active on the list.

⁵ The instant matter is the direct request of the Middlesex County appointing authority regarding this issue, but the matter of enforcement was also referred to the Civil Service Commission for its determination.

authorize the necessary certification or advise that there is no appropriate eligible list. Additionally, *N.J.A.C.* 4A:4-4.1(b) states that when a permanent competitive position has been filled on a nonpermanent basis, this agency shall determine whether there is a need to issue a certification. Upon determining that there is a need for a certification as provided in *N.J.A.C.* 4A:4-4.1, this agency shall issue or authorize the issuance of a certification to the appointing authority containing the names and addresses of the eligibles with the highest rankings on the appropriate list. *See N.J.A.C.* 4A:4-4.2(a).

Initially, there is no dispute that the Middlesex County Board of Social Services is an autonomous agency. Initially, it is noted that, pursuant to *N.J.S.A.* 44:1-10.1 and *N.J.S.A.* 44:1-10.2, County Welfare Boards may be referred to as County Boards of Social Services. These terms are interchangeable. Thus, *N.J.S.A.* 44:7-7 and *N.J.S.A.* 44:7-9, which govern the creation of a County Welfare Board, are applicable. A review of *N.J.S.A.* 44:7-7 and *N.J.S.A.* 44:7-9 reveals that a County Welfare Board is created as a corporate entity, having such power to sue and be sued and make bylaws in its own name. Thus, a County Welfare Board is considered a “body corporate” as it is created as a municipal corporation. Moreover, the statutory provisions state that a County Welfare Board may appoint and remove its employees. Thus, the Middlesex County Board of Social Services is an autonomous agency from Middlesex County.

What is in dispute is whether Middlesex County is required to utilize the Computer Service Technician (C0562M) eligible list for a position not within the Middlesex County Board of Social Services, as it believes that this eligible list is only for that jurisdiction. It is emphasized that the examination announcement for Computer Service Technician (C0562M) was announced for Middlesex County, and not for a particular department or agency within the county. This is in accordance with the longstanding practice that open competitive examinations are announced for both parent and autonomous agencies. It would be administratively inefficient to issue an examination announcement, eligible list, and certification for each department and agency within a county for the same title open to the same pool of candidates, *i.e.*, county residents. Moreover, it is emphasized that *N.J.S.A.* 44:7-9 specifically provides that a County Welfare Board “shall appoint such other officers, assistants and employees as may be necessary and proper to carry out the provisions of this chapter, **subject to compliance with the personnel standards and regulations maintained by the Civil Service Commission** or the State division or both as otherwise provided.” [Emphasis added]. Thus, it is clear that the standards established by this agency would be applicable to both the Middlesex County Board of Social Services and Middlesex County.

Moreover, no Civil Service law or rule precludes the aforementioned practice. Indeed, only special reemployment lists are treated differently. In this regard, *N.J.A.C.* 4A:8-2.1(c)1i provides that a special reemployment list from one

governmental jurisdiction shall not be certified to another jurisdiction. In local service, an autonomous agency shall be considered a separate jurisdiction for certification of special reemployment lists. *See e.g., In the Matter of John Haley, County of Middlesex* (MSB, decided January 23, 1996). In that case, it was determined that the Middlesex County Mosquito Extermination Commission was a body corporate with the powers of an appointing authority and was thus considered to be an autonomous agency for purposes of certifying a special reemployment list.⁶ In contrast, in *In the Matter of Chief Clerk, Clerk, and Principal Clerk Typist Camden County, Special Reemployment Lists, Office of the Prosecutor*, 282 N.J. Super. 530 (App. Div. 1995), *cert. denied*, 142 N.J. 573 (1995), it was determined that the Camden County Prosecutor's Office was not a body corporate with the powers of an appointing authority. Therefore, it was not considered an autonomous agency and was required to utilize the special reemployment list containing the names of laid off employees from other county departments. Accordingly, the court upheld this agency's certification of a county-wide special reemployment list since the requirements of *N.J.A.C. 4A:8-2.1(c)1i* were not met.

N.J.A.C. 4A:8-2.1(c)1i is inapplicable to the present matter, as this matter involves the certification of an open competitive eligible list and not a special reemployment list. Accordingly, it was appropriate to certify the Computer Service Technician (C0562M) eligible list against the provisional appointment of Hoffman, regardless of whether the appointing authority had knowledge of the existence of the list at the time of Hoffman's appointment. It is underscored that when this agency has certified a list of eligibles for appointment to a particular position, the appointing authority must hire or promote from that list. *In the Matter of Chief Clerk, supra* at 534. Therefore, since the Middlesex County appointing authority has not presented any other basis to prevent it from disposing of the subject certification, it is ordered that, within 30 days of issuance of this decision, the appointing authority properly dispose of the October 2, 2012 certification. Since Hoffman does not appear on the certification, he must be displaced by an interested eligible on the certification. "Under the civil service regulations and statutes, a provisional appointee holds his or her 'employment in the competitive division of the career service pending the appointment of a person from an eligible list.'" *In the Matter of Chief Clerk, supra* at 533-534 (*citing N.J.A.C. 4A:1-1.3*). Should the appointing authority decide not to fill Hoffman's provisional position, it must request an appointment waiver pursuant to *N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2* and it could be subject to the costs of the selection process.

As a final matter, it appears that the Computer Service Technician (C1073P) eligible list was announced and promulgated in error. The prior Computer Service

⁶ However, *N.J.A.C. 4A:8-2.1(c)1* was relaxed in order to allow the laid off employee from the Middlesex County Mosquito Extermination Commission to be certified from the special reemployment list to all departments within the county for future certifications.

Technician (C0562M) eligible list is complete with seven eligible candidates and does not expire until March 16, 2014.⁷ However, in order to hold harmless the eligibles on the (C1073P) eligible list, it is not necessary to cancel this list pursuant to *N.J.S.A.* 11A:4-4a and *N.J.A.C.* 4A:4-3.3(c). Rather, it is appropriate to consolidate the Computer Service Technician (C0562M and C1073P) eligible lists pursuant to *N.J.S.A.* 11A:4-4c and *N.J.A.C.* 4A:4-3.5. *N.J.A.C.* 4A:4-3.5 provides that successive eligible lists for a given title which result from successive open competitive or promotional examinations may be consolidated. In this case, it would be proper to consolidate the eligible lists by placing the first name on the later list (C1073P) after the last name of the prior list (C0562M) for future certifications and considering the number of positions available. Regardless, it is emphasized that the October 2, 2012 certification was issued with a complete list of eligibles. Therefore, at this juncture, it is not necessary to issue a new certification with the consolidated lists. Moreover, the Civil Service Commission notes that an eligible does not possess a vested property interest in a position. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990).

ORDER

Therefore, it is ordered that the appointing authority's request be denied. It is further ordered that the appointing authority properly dispose of the October 2, 2012 certification for Computer Service Technician (C0562M) within 30 days.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

⁷ It is noted that although the Middlesex County appointing authority requests a certification from the Computer Service Technician (C0562M) eligible list, it appears that Hoffman would not be reachable for appointment as there is one position and he is ranked seventh.